cover for the death of a valuable dog, evidence that a car was going pretty fast or very fast, does not tend to prove that the car was being driven at an unlawful rate of speed. Baumgardner *v.* Toledo, etc., St. R. Co., 7 N. P. 386, 5 O. Dec. 159.

Res Inter Alios Acta.—An ordinance limiting the rate of speed of street cars in running across the public bridges of a city, is not admissible in evidence to show negligence in running at a greater rate of speed in approaching a bridge. Ulrich *v.* Toledo, etc., St. R. Co., 10 O. C. C. 635, 5 O. C. D. 111, reversed in 67 O. St. 508, 67 N. E. 1100.

SMILEY *et al. v.* PROVIDENT LIFE & TRUST CO. OF PHILADELPHIA.

Jan. 17, 1907.

[56 S. E. 728.]

1. Writ of Error—Decisions Reviewable—Final Judgments—Ordering Rehearing.—Code 1887, § 3454 [Va. Code 1904, p. 1836], allows a writ of error from final judgments or orders. Held, that a writ of error cannot be awarded to an order setting aside a judgment and granting a rehearing, as it is not a final judgment.

On Rehearing.

2. Writ of Error—Decisions Reviewable—Final Judgments—Actions at Law.—Code 1887, § 3454 [Va. Code 1904, p. 1836], provides that any person aggrieved by any order in certain proceedings or any party to case in chancery wherein there is a decree or order dissolving an injunction, etc., or to any civil case wherein there is a final judgment, decree, or order, may present a petition, if the case be in chancery, for an appeal, and, if not in chancery, for a writ of error or supersedeas to the judgment or order. Held, that a writ of error in any case in law was not authorized before final judgment.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, §§ 329-331.]

3. Same—Ejectment.—Acts 1902-03-04, p. 779, c. 499, amending Code 1887, § 3454 [Va. Code 1904, p. 1836], by providing that any person aggrieved by any judgment, decree, or order in a controversy concerning the title to or boundaries of land, if not in chancery, may present a writ of error to the judgment or order, does not give a party to an action in ejectment the right to review until a final judgment has been entered in the cause.

Error to Circuit Court, Augusta County.

Action by John P. Smiley and others against the Provident Life & Trust Company of Philadelphia. From an order granting defendant's petition to set aside a judgment and for a rehearing, plaintiffs bring error. Writ dismissed.

Braxton & McCoy, for plaintiffs in error.
J. M. Perry, for defendant in error.

CARDWELL, J. This is a writ of error to a judgment of the circuit court of Augusta county awarding a new trial to one of the defendants in an action of ejectment theretofore pending and determined in that court.

The action was brought by plaintiffs in error in March, 1897, against the defendant in error (the Provident Life & Trust Company of Philadelphia), the Virginia Iron Investment Company, J. Harry Lee, and Stephen Lee to recover 26-48 interest in a tract of land situated in Augusta county, known as the "Bare Ore Bank" or the "Bare Bank Property." Several years prior to the institution of the suit the whole of the property was claimed to be owned by J. Harry Lee and Stephen Lee (claiming the surface right), and a man by the name of Joslyn (claiming the mineral right), so that Joslyn, the said Lees, and plaintiffs in error here claimed under one and the same source of title. Joslyn, by deed duly recorded in Augusta county, conveyed his title (such as it was) to the Virginia Iron Investment Company, which, in turn, executed a deed of trust upon the property, conveying the Joslyn title to the defendant in error, a corporation, in trust to secure payment of $250,000 evidenced by bonds issued by the Virginia Iron Investment Company. Upon the institution of this suit process was served upon the Virginia Iron Investment Company in person, but, it appearing that the defendant in error and the said Lees were nonr sidents of the commonwealth of Virginia, the process upon them was served by order of publication duly executed and matured.

At a trial of the cause on the 31st day of May, 1889, plaintiffs in error recovered a judgment against all of the defendants for various undivided interests in said tract of land, aggregating 26-48 thereof, also for their costs, and the suit was stricken from the docket as an ended cause.

On May 10, 1901, the defendant in error filed its petition in the circuit court of Augusta county reciting the foregoing facts, denying it had ever appeared to defend the said action, and praying that the said cause be reopened and reheard, and that the judgment theretofore rendered therein be set aside and annulled. Upon a hearing of this petition, the answer of plaintiffs in error thereto and an agreed statement of the evidence, based upon the only ground of defense that plaintiffs in error were allowed to make to the petition, the prayer of the petition to rehear was granted, the judgment in ejectment set aside as to defendant in error, and it was permitted to plead or otherwise make defense to the original declaration in ejectment. It is to that judgment this writ of error was awarded.

That this court had not jurisdiction to award a writ of error

to the ruling complained of, unless it is a final determination of the rights of the parties within the meaning of a final judgment, does not admit of argument. Codes of Va. 1887 and 1904, § 3454; Lockridge *v.* Lockridge, 1 Va. Dec. 61; Roge s' Adm'r *v.* Bertha Zinc Co., 1 Va. Dec. 827; Tucker *v.* Sandidge, 11 Va. Law J. 107; Priddy & Taylor *v.* Hartsook, 81 Va. 67.

This ruling is not, in the opinion of the court, a final judgment within the meaning of these words. It leaves the original action of ejectment to be yet tried and determined as between plaintiffs in error and the defendant in error upon the issues yet to be made upon the plea of the general issue or other defense made by the defendant in error pursuant to the ruling of the circuit court awarding it a new trial. As to what may be the ultimate determination of the rights of the parties, we can, in the present situation of the case, know nothing judicially. Non constat but that at a trial of the issue or issues between the parties plaintiffs in error will prevail, in which event they would not be prejudiced by the ruling here complained of. On the other hand, if defendant in error should prevail, a writ of error to the final judgment of the circuit court in its favor would bring under the review of this court, not only that final judgment, but first the ruling of the circuit court awarding defendant in error a new trial that it is designed to have reversed upon this writ of error, which is a judgment in no sense final in its character.

The application of plaintiffs in error to this court, therefore, was premature, and the writ of error must be dismissed as improvidently awarded.

On Rehearing.

PER CURIAM. At the January term, 1907, of the court, the writ of error which had theretofore been awarded in this cause (an action of ejectment) was dismissed as improvidently awarded, upon the ground that there had been no final judgment in the cause.

It is insisted in the petition to rehear that by the act of December 31, 1903 (Acts 1902-03-04, pp. 778, 779, c. 499), amending section 3454 of the Code 1887 [Va. Code 1904, p. 1836], a writ of error will lie to an order or judgment in action of ejectment, although there has been no final judgment in the cause. The petition states that prior to that amendment section 3454 did not require that a final order should be entered "in a controversy concerning the probate of a will or the appointment or qualification of a personal representative, guardian, curator or committee, or concerning a mill, roadway, ferry, wharf or landing," before there could be an appeal or writ of error, and that, as the amendment to section 3454 places "controversies con-

cerning the title to or boundaries of land" in the same class as the controversies named, a writ of error lies to any order or judgment in action of ejectment, although no final judgment has been entered in the cause.

If it were true that prior to the amendment of section 3454 an appeal or writ of error did lie from or to an order or judgment in that class of cases, although there had been no final judgment in the cause, the contention of the petitioners for the rehearing would be clearly right. But prior to the amendment an appeal or writ of error did not lie in any case at law until there had been a final order or judgment in the cause. There was a provision in that section that in any case in chancery wherein there is a decree or order dissolving an injunction or requiring money to be paid, or the possession or title of property to be changed or adjudicating the principles of a cause, there might be an appeal, although no final order or decree had been entered therein. But there was nothing in the section, as construed by this court, which authorized a writ of error in any case at law until there had been a final judgment. See Gillespie *v.* Coleman, 98 Va. 276, 36 S. E. 377, and authorities cited, especially Trevilian *v.* Louisa R. Co., 3 Grat. 326; Hancock *v.* R. & P. R. Co., 3 Grat. 328; Ludlow *v.* City of Norfolk, 87 Va. 319, 12 S. E. 612; Postal Tel. Co. *v.* N. & W. R. Co., 87 Va. 349, 12 S. E. 613; R. & E. R. Co. *v.* Johnson, 99 Va. 282, 38 S. E. 195.

We are of opinion that the language of section 3454, as amended, does not give a party in an action of ejectment the right to have the proceedings in the cause reviewed by this court until a final judgment has been entered in the cause.

The petition to rehear must therefore be denied.

JEREMY IMP. CO. *v.* COMMONWEALTH.

(Supreme Court of Appeals of Virginia. Jan. 24, 1907.)

[56 S. E. 224.]

1. Exceptions, Bill of—Incorporating Evidence—Stenographer's Report.—Immediately following a bill of exceptions setting forth the court's refusal to set aside the verdict was a certificate, signed by the judge under seal: "And the court certifies that the following stenographic report of the evidence made by O., to which report the affidavit of said O. is appended, is all the evidence, including documentary evidence therein referred to, introduced on the trial of this cause, which report is adopted and made a part of the record." Following such certificate was the complete evidence with the affida-